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### ORIGINAL

DEPT OF TRANSPORTATION

BEFORE THE GROUP OF THE SECRETARY

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C.

Supplemental Advance Notice of

Proposed Rulemaking--

Computer Reservation System

Regulations

upon:

Docket OST-97-2881-/47
Docket OST-97-3014-16

Docket OST-98-4775 \_ (\_2\_

COMMENTS OF

MIDWEST EXPRESS AIRLINES, INC.

Communications with respect to this document may be served

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# BEFORE THE OFFICE OF THE SECRETARY DEPARTMENT OF TRANSPORTATION WASHINGTON, D.C.

:

Supplemental Advance Notice of

Docket OST-97-2881

Proposed Rulemaking--

Docket OST-97-3014

Computer Reservation System

Docket OST-98-4775

Regulations

September 22, 2000

### COMMENTS OF MIDWEST EXPRESS AIRLINES, INC.

Midwest Express Airlines, Inc. ("Midwest Express") is pleased to respond to the DOT's request for parties to the CRS rulemaking proceeding to update their 1997/1998 comments and reply comments previously submitted in Docket OST-97-2881. 4 While there have been changes in the intervening years regarding system ownership and the more prevalent use of the Internet to market and distribute airline tickets, these changes do not undermine or alter the foundation on which the CRS regulations were originally adopted. Hence, Midwest Express urges the Department to extend the rules to insure that system owners do not take undue advantage of their position to control or shew the marketing and distribution of airline tickets to favor their airline owners or airline affiliates. Moreover, Midwest Express urges the DOT to extend

 $<sup>^{1/}</sup>$  On December 9, 1997, Midwest Express filed extensive comments and detailed exhibits in Docket OST-97-2881 in support of its position that the CRS regulations should be extended and, in certain aspects, expanded. Reply comments were submitted by Midwest Express on February 3, 1998.

the CRS rules on a limited basis into other areas of CRS and Internet conduct based on changes in industry practices.

With one major exception, the positions taken by Midwest Express in its 1997 and 1998 comments and reply comments in this Docket have not changed. 2/ Midwest Express sees a continuing need for DOT regulation of CRS systems. development of stronger and more viable airline web sites has not significantly reduced the marketing clout of CRS systems or their potential for anti-competitive, unfair or deceptive Apart from the need to continue CRS regulation, Midwest Express argued in its earlier comments, and continues to advocate an extension of such regulation to travel agent Internet websites and the control of preferred carrier agreements that deprive the traveling public of unbiased information on which they make their purchase decisions. passage of time has not diminished the strength of these Midwest Express positions and the DOT is urged to consider them as it considers the supplemental comments of Midwest Express and others.

 $<sup>^{2/}</sup>$  The need to regulate the travel agent practice of creating passive or non-productive billings as previously urged by Midwest Express is no longer needed as the structure of CRS booking fees has been revised only to require payment for transactions that are actually ticketed.

Midwest Express has structured these comments to address the specific questions posed by the DOT in this round of comments and not necessarily to repeat its previously taken positions on CRS systems and airline marketing practices unless the context requires otherwise. If facts on which Midwest Express had based its prior position have changed it will be noted below and Midwest Express will give its views on the implications of these factual changes in the context of this rulemaking proceeding.

### I. THE DOT CONTINUES TO HAVE THE LEGAL AUTHORITY TO REGULATE CRS CONDUCT

One fact has not changed since 1992, when Part 255 was last recodified, or 1997, when the DOT last asked for comments on the appropriateness of continuing to regulate CRS systems. There continues to be only four CRS systems and Midwest Express is dependent upon all four for the distribution of its services in each region of the country. Certainly, with the advent of growth in the use of the Internet to distribute tickets and other changes in the industry, if Midwest Express could have cut its dependence on any or all of the four systems, it would have done so. However, this has not been the case. Midwest Express continues to have to participate in each of the four systems—Sabre, Galileo, Amadeus and

Worldspan--in order to effectively distribute tickets through travel agents which currently produce approximately 73% of the carrier's net revenues.

The percentage of net Midwest Express bookings by each of the four CRS systems is set forth in Exhibit 1. Express' dependence on each of the four systems continues. too does the relative ranking of the four systems in terms of net Midwest Express bookings. Sabre, with its strength in the Midwest continues to produce the most net bookings for Midwest Express. Next is Galileo, then Worldspan and then Amadeus-the same ranking as in prior years suggesting that the CRS systems still have strong identity in those specific regions of the county where each system has historically had high market share.3/ No alternative system or Internet site has been able to dislodge Sabre from its preeminent position among Midwest travel agents, for example. And for the same reason Midwest Express has no alternative to participating in Sabre and paying whatever fees it demands for its services. same remains true with respect to the other three system vendors.

 $<sup>^{3/}</sup>$  While Galileo and Amadeus have produced fewer net bookings for Midwest Express than in previous years, their contributions are still sufficiently great, representing millions of dollars of revenue to cause Midwest Express to continue as a participating carrier.

Indeed, it continues to be the case that only one major air carrier--Southwest--is in a position to participate in only one system (Sabre) while most if not all other major and national carriers continue to be tethered to all four CRS systems. Therefore, the historic factual predicate for the CRS rules--that system participation is essential to the marketing of airline services--is still observed in the market.

The other DOT justification for adoption of Part 255 was that airline control over CRS systems would permit system owners to prejudice airline competition by biasing schedule displays. The DOT's Supplemental Advance Notice of Proposed Rulemaking ("ANPRM") notes that some airline ownership divestiture has occurred since 1997, when comments were last solicited.

However, all four systems continue to be strongly tied with one or more major airlines. Therefore, even though Sabre is now 100% publically owned, it continues to be marketed by American and Southwest. Galileo is still one-forth airline owned and receives marketing support from United. Worldspan remains entirely owned by Northwest, Delta, and TWA and Amadeus are owned, in part, by foreign air carriers who have

alliances with U.S. carriers with whom Midwest Express competes for domestic traffic.

Should airline owners or those airlines affiliated with CRS systems seeks to exert control over CRS displays they have the very real potential to prejudice a non-owner, such as Midwest Express, and unduly advantage themselves. In other words, the industry landscape has not changed so much that the legal justification for CRS regulation (relying DOT's primarily upon section 411 of the Federal Aviation Act U.S.C. 41712)) is the (recodified as 49 least bit questionable. The services provided by systems are still essential and the potential for anti-competitive conduct or unfair or deceptive practices by airline controlled or affiliated CRS systems is still possible.4/ Consequently, Midwest Express urges the DOT to continue to prescribe at least minimum standards of CRS system conduct.

### II. CRS DISPLAY BIAS RULES SHOULD APPLY TO INTERNET TRAVEL AGENTS

The other major structural change since 1997 in the airline ticket distribution arena was and is the continued

 $<sup>^{4/}</sup>$ It is not particularly relevant whether or not minority airline owners or airline affiliates have sought to exert control of CRS activities as long as they have the capacity to do so, the DOT rules must remain in place to prevent any unlawful conduct.

growth in the number of individuals that obtain airline schedule and pricing information through the Internet using on-line travel agencies and airline websites.

In one year the percentage of industry airline bookings made through the Internet increased from 1.9% in 1998 to 5.4% in 1999. This translates into 16.5 million airline passengers who used the Internet to book their travel. Of this number, 51% booked through single-vendor (i.e. airline) websites and 34% booked through Internet travel agent sites such as Travelocity and Expedia. In terms of revenues, over \$7 billion worth of travel was purchased over the Internet in 1999.

As noted, much of the electronic purchases of air transportation has been accomplished through Internet travel agents. However, as observed by the DOT in the ANPRM, the fact that on-line travel agents use one or more CRS systems as their booking engines makes it impossible for carriers to reduce, much less eliminate, their dependence on CRS systems for the distribution of schedule and fare information. For example, Travelocity, which is powered by Sabre, is the number one external generator of sales on Midwest Express in the year

2000 and Expedia is number 3.5 What is so remarkable about these statistics, apart from showing the importance of these sale outlets to the ability of Midwest Express to distribute its services, is that in 1997 Travelocity ranked 116 and Expedia ranked 233 as generators of Midwest Express sales. The growth of Internet driven bookings has significantly increased.

Were Midwest Express not to participate in Sabre or Worldspan, it would loose the opportunity for its schedules and fares to appear in the two largest Internet travel agent sites which represent a large number of sales for Midwest Express. Travelocity and Expedia, on a combined basis, control approximately 85% of the Internet multi-vendor travel agency market which is increasing in size. For this reason, regulation of travel agent Internet websites can be predicated on the same basis as regulation of CRS systems and that is the utter dependence of air carriers to market airline services through this new ticket distribution technology.

The DOT has requested comments on the regulation of online travel agency websites and airline use of the Internet with respect to both airline websites and third-party

 $<sup>^{5/}</sup>$  This ranking excludes sales booked through Midwest Express' reservations system, corporate accounts or sales through the carrier's proprietary web site.

websites. It is the position of Midwest Express that the potential for anti-competitive or deceptive practices by online providers of airline schedule and fare information is just as great, if not greater as discussed below, as is the case when bookings are placed through bricks and mortar travel agents. Therefore, targeted DOT regulation of Internet sites is appropriate and necessary.

Turning first to airline websites, Midwest Express hosts its own website reached at www.midwestexpress.com. This site, which is currently being revised and updated, permits customers to review the carrier's schedules, select a flight or flights for travel, receive fare information for the selected flights and securely book their travel. In addition, the Midwest Express website offers the consumer information regarding the services of the carrier, aircraft seating charts, flight status, frequent flyer award status, vacation packages and company information.

The concept of bias is a relative one. When a consumer visits a carrier website there is no expectation that the information being provided to the consumer is necessarily unbiased or neutral. Indeed, other airline information is not available on many carrier websites. The services of only a single carrier are featured and no one can realistically say

they could be misled when consulting a carrier's website which seeks only to inform about the services of a single carrier.

Some other air carrier web sites do offer flight schedule and fare information of other airlines. However, in such cases, the carrier web sites will, by default, and with notice to the consumer, prefer the web site's sponsoring carrier.

See Exhibits 2 (United "Create Itinerary" page making United the default carrier of choice); Exhibits 3 (TWA "Reserve a Round Trip Ticket" with TWA listed as the default "Preferred Airline"). Therefore, the DOT is correct in noting that no one has ever suggested the DOT has a role to play in regulating a carrier's own website and it should not do so now.

However, it is an entirely different matter when one considers the potential for harm by biased Internet travel agency schedule displays when the bias is not made known to the consumer. The core issue to be resolved by the DOT in this proceeding is whether biased travel agent Internet sites can result in the same manner of competitive harm to nonsystem owners as the DOT has demonstrated is the case when travel agent subscriber displays are biased by system owners or by the travel agency website. Midwest Express answers this question in the affirmative. The DOT should regulate the

displays of Internet travel agents that get their schedule and fare information from CRS systems. The DOT should do so by either requiring the on-line travel agent to advise their users that its listing of schedules and fares may prefer certain carriers over others, or to require the electronic travel agent to use the CRS-supplied integrated display as defined in section 255.4.

There can be no question but that travel agent Internet website are biased to the detriment of the consumer. The Exhibits to these comments demonstrates the point.

Midwest Express is the only carrier offering nonstop service between Milwaukee and San Francisco. Using the Worldspan integrated display, and requesting a morning departure, the Midwest Express flight is listed first since section 255.4(a)(2) requires elapsed times or single plane service offerings be used as factors in selecting service options over connecting flights. Exhibit 4. With the exception of Sun County's one-stop service, which is listed second, all of the other flights in the market are connecting flights and hence, the Midwest Express flight is shown first as the most logical flight to match the customer's choice.

Comparing the Worldspan integrated display of the Milwaukee-San Francisco market with an Expedia schedule

display produces a far different, indeed misleading, result even though the Worldspan booking engine and database is used by Expedia. Using the Expedia "build your own trip" feature and specifying an 8:00 am departure, one would naturally expect to see the Midwest Express flight listed first since it is the only nonstop flight in the market, and would have the shortest elapsed time. In fact, Midwest Express Flight 918 is the 13th and last flight displayed by Expedia. Exhibit 5. Listed before the Midwest Express flight are the connecting services of Continental, United, American, TWA and Northwest, despite the fact that the elapsed time of the Midwest Express flight is considerably shorter than the alternative flights and the requested departure time was within the same hour as the scheduled Midwest Express departure time. \$\frac{1}{2}\$

This is deep and pervasive display bias, but not necessarily so obvious that the average consumer will detect it. Indeed, Expedia's "build your own flight" feature definition states "when time really matters, try choosing flights one by one according to their flight times."

<sup>&</sup>lt;sup>6</sup>/ Unlike Travelocity, Expedia uses only one data block with one carrier logo to display connecting service. Travelocity uses two data blocks and repeats the carrier logo leaving no doubt that the service is connecting. Expedia's method of schedule presentation could well confuse users of its Internet site about the precise nature of the airline service being purchased.

(Emphasis in original) Exhibit 6. By this definition, Expedia is intentionally misdirecting the consumer by leading him or her to believe that the most timely alternative flights would be displayed before less expeditious flights. In the case in which the customer selects an 8:00 a.m. departure and Midwest Express has the only nonstop flight at 8:40 a.m., Expedia does not show the most timely and fastest flight until the 13<sup>th</sup> listing.

Apparently, Expedia has made arrangements with other carriers to prefer their connecting schedules over the nonstop flights of Midwest Express which otherwise appears first in the integrated display. This results in consumers receiving misleading and incomplete data and a significant reduction in the level of competition for air transportation. Midwest Express believes that consumers are entitled to know of the biasing practices of Expedia when they make their purchase decision.

To be sure, Midwest Express does not oppose the right of electronic travel agents to bias their travel recommendations

The biasing of the Expedia schedule displays of Midwest Express flights in the Milwaukee-San Francisco market can be observed in other markets in which Midwest Express is the only nonstop service provider. Midwest Express nonstop flights are ranked much lower in Expedia than on the integrated display in other markets, such as Milwaukee-LaGuardia, Kansas City-San Antonio and Washington, D.C.-Omaha.

or schedule displays as long as the consumer is adequately made aware of the fact. For example, if one uses the services of Travelocity, and requests schedule information in the Milwaukee-San Francisco market (Exhibit 7) the following screen will advise the consumer that Midwest Express is a featured airline and advises that by selecting the featured carrier, only its schedules and fares will be displayed. Exhibit 8. Selecting this option will only display the Midwest Express round trip nonstop flights in the market selected. Exhibit 9. In other words, the existence of any preferential carrier agreement is disclosed to the Travelocity user thereby facilitating an informed choice of carrier.

However, if the Travelocity user wishes to see the schedules of all carriers (using the "Search by Schedule" feature) and not just those of the featured carrier, then Travelocity, quite unlike Expedia, will display the most obvious and doubtless, consumer preferred, schedules first. Exhibit 10. In this display, Midwest Express Flight 918 is listed first. The next listing is the only direct service in the market (the one stop Sun Country flight) and then a series of connecting flights are listed. This order of ranking is the same that one would get using similar parameters in the Sabre integrated display, which is unbiased by regulation.

The DOT cannot realistically expect that users of Expedia will be able to detect on their own the bias built into its display criteria. Nonetheless Expedia does disclose to the consumer the basis for its carrier schedule display rankings. Indeed it can be said that Expedia intentionally misleads the consumer about the manner in which its schedule displays are constructed.

However, the Department has repeated in the ANPRM its earlier stated view in the 1997 NPRM that consumer use of Internet websites is different from travel agent use of CRS displays. Specifically, the DOT has found that travel agents do not regularly use more than one CRS system (making schedule display comparisons impossible) and, based on time pressures, usually sell off the first screen. Consumers, the DOT believes, do not act under the same limitations. Further in the 1997 NPRM, the Department, in distinguishing schedule displays used by subscribing travel agents and consumers, cited to the fact that Internet sites are not held out as unbiased and that the ability of consumers to directly view schedule displays are possible reasons for not regulating Internet websites.

Midwest Express does not agree that these differences are real or, even if it could be demonstrated, that they undercut

the justification for regulation of display bias of Internet sites. First, the fact that Internet consumers can see the schedule display as opposed to relying on a travel agent's verbal description of flight availability will not improve the likelihood that the consumer will realize that the schedule display is biased. Indeed, a consumer would have to have intimate knowledge of airline schedules to detect the kinds of subtle (and even not so subtle) biasing of the schedule displays. Such consumers are relatively few in number and would represent an infinitesimally small portion of the traveling public. Hence, the ability to spend additional time studying an Internet-provided schedule display is of little, if any, consequence unless the consumer has a frame of reference permitting him or her to detect the bias.

Second, the fact that Internet sites do not hold themselves out as unbiased sources of information is a fact that is not noticed so as to be meaningful in the consumer's selection process. For example, nothing in the Expedia schedule listing in the Milwaukee-San Francisco market as shown in Exhibit 2, gives any indication that the displays do not reflect the objective schedule ranking standards that apply to integrated displays. Indeed, the Expedia "build your

own" option suggests that flight schedule ranking will be time sensitive, when, in fact, it is not.

The inherent biasing of the Expedia schedule display will have the very same result that a travel agent display bias will produce—a consumer selection that is made on the basis of imperfect information that is shaped by the carrier or carriers that are willing to pay for preferential displays. While this may be a profit maximizing strategy for Expedia to follow, it is not a pro-competitive policy and should be prevented by the DOT.

The other distinguishing factors noted by the Department were the inability of travel agents to search more than one database and the time pressure on them to complete the transaction. These differences assume that a majority of consumers will search more than one Internet site before making their selection. Midwest Express is not convinced that consumers regularly search more than one website. Moreover, just because a consumer visits more than one biased Internet site the consumer's purchase decision will be any less tainted then if they visited only one site. The bias of one site will not necessarily cancel out the bias of another Internet site.

To the extent the computer and the Internet are hailed as advances, they are labor saving devices. It does not

necessarily follow, therefore, that consumers will turn away from travel agents in favor of electronic purchases of air transportation if, in fact, they do not save time in doing so. Surely, if the decision and purchase process is prolonged by using Internet websites, (should consumers feel compelled to consult more than one site) the service will not likely be deemed sufficiently attractive to attract large numbers of users. Therefore, the DOT's premise that a consumers more thorough and leisurely exploration of schedules (by consulting multiple sites) will be the antidote to display bias, lacks compelling logic.<sup>2</sup>

While the objective of the CRS rules is to maintain a competitive balance between carriers owning or affiliated with CRS systems and other participating carriers, the ultimate beneficiary of the CRS rules is the traveling public which is assured that their travel decision will be based on as perfect (i.e., unbiased) information as is possible. Internet sites displaying unfairly biased information to favor one airline over another will lessen the ability of the consumer to make

<sup>§/</sup> Similar to the point noted above, bias is not overcome simply because the consumer may work with the schedule displays for longer periods of time than do professional travel agents. Indeed, an agent with years of experience will logically make a faster and more fully educated selection than a consumer who is unfamiliar with and lacks years of experience in working with airline schedules.

travel plans on reasonably unbiased schedule and fare information. This growing problem must be addressed by the DOT in this rulemaking proceeding by modifying section 255.4. The rule should be changed to either, (1) require Internet websites to use an integrated display as defined in section 255.4 or, (2) require Internet travel agents to advise the customer in a conspicuous manner that the display of schedules and fares reflect preferential carrier arrangements and that the order of display may not reflect selections based solely on the best schedules or best fares. Internet travel agents could have the option of complying with either rule.

Finally, on the question of Internet travel agent websites, the ANPRM mentioned the planned website branded as Orbitz and the pending ASTA complaint concerning its business activities. In addition, the DOT, in discussing the development of Internet travel agents in the ANPRM, referred to third party websites, such as Orbitz. Midwest Express has entered into an agreement to participate in Orbitz as an associate airline and wishes to comment on this issue.

While there are numerous commercial reasons why Midwest Express choose to participate in Orbitz, its decision was influenced, in part, by the fact that Orbitz has contractually obligated itself to respond to customer requests with an

integrated display and further has agreed to display multiple airline schedules, fares, rules, seat availability and other flight related information in an unbiased manner. Moreover, Orbitz has agreed that the criteria on which information is displayed will not reflect carrier identity and will be consistently applied among all carriers, even carriers that, unlike Midwest Express, have an ownership interest in Orbitz. These assurances were important to Midwest Express and will preclude, as is the case with the Expedia example given above, direct, nonstop service of Midwest Express being listed after connecting flights with considerably longer elapsed times.

It is ironic that ASTA has complained in Docket OST-99-6691 about the lawfulness of Orbitz arguing that it will threaten competition when, at the same time, its travel agent members often enter into preferential agreements with air carriers for override commissions and other consideration that call into question the neutrality of their advice to passengers. See comments of Midwest Express, OST-Docket 97-2881, pages 25-27. Slanted schedule and fare information is recognized to have an anti-competitive effect. On the other hand, Orbitz will provide its customers unbiased integrated displays that will provide much higher quality information and data to those seeking to book airline travel. The DOT

should bear in mind this vital distinction when addressing the ASTA complaint to the extent it will do so in this proceeding. $^{9/}$ 

#### III. CRS PRICING SHOULD BE REGULATED

The ANPRM states that the CRS pricing issues raised by the America West petition for rulemaking in Docket OST-97-3014 will be considered in this proceeding. Midwest Express has submitted comments in Docket OST-97-2881 urging a reasonableness test for CRS prices charged participating carriers. Midwest Express Comments, Docket OST-97-2881, pages 9-11; Midwest Express Reply Comments, pages 4-6.

It remains the position of Midwest Express that if, as the DOT has found in the past, CRS bookings fees are not cost-based, and because, as has been shown, carriers depend upon CRS systems as an essential means of ticket distribution, the Department must address the CRS pricing issue. Therefore, Midwest Express urges the Department to press system owners

 $<sup>^{9/}</sup>$  Midwest Express did not respond to the ASTA complaint in Docket OST-99-6691 since it was not a named respondent. Midwest Express did answer in opposition to the ASTA complaint in Docket OST-99-6410, in which it was named, denying ASTA allegation that its unilateral reduction in the commission rate constituted a violation of section 411.

for the empirical data necessary to determine if CRS fees reasonably relate to the cost of providing the service.  $\frac{10}{}$ 

If the relationship of CRS fees and costs continues to be out of balance the DOT has a duty to address the situation. The Department cannot simply ignore the issue of excessive fees when, at the same time, the DOT holds that participation is CRS systems is essential to the distribution of airline tickets. It is illogical to attack only one-half of the documented problem of market control being exercised by system vendors. Not only do systems have the market power to manipulate the schedules and fares to favor their owners, affiliated carriers or carriers from whom they garner preferred carrier fees, they have the market power to extract monopoly rents from participating carriers such as Midwest Express.

Since 1993, the CRS fees paid by Midwest Express have increased every year with one exception in 1997 and has outstripped increases in bookings. From 1993 through 1999 (except 1997) CRS fees increased in double digits from a low of 12.7% to a high of 25.2%. Fee increases of this magnitude

 $<sup>\</sup>frac{10}{}$  In a 1988 study, the DOT found that bookings fees paid by participating carriers were approximately twice the CRS systems' average costs of providing the booking service. DOT, Study of Computer Reservations Systems, 1998.

in a generally non-inflationary period and in an industry where technological improvement has substantially reduced the cost of computing power, the DOT must adequately address market power being exercised by system owners through pricing.

In taking this position, Midwest Express appreciates that the Department has consistently rejected the call for CRS fee oversight. Rate regulation is not a subject Midwest Express approaches lightly. However, no matter how difficult the task and no matter what burdens a rule of CRS fee reasonableness would impose on the Department's staff, the DOT has a duty to eliminate the exercise of market power by the CRS vendors if it determines that its fees are not cost-based. The alternate the continued collection of monopoly rents participating carriers with no offsetting public benefit. If as has been the case in the past, the four vendors continue to oppose rate regulation, the DOT should be suspicious of their motives for doing so and look carefully at the issue in this proceeding.

### IV. IMPROPER INTERNET TYING ARRANGEMENTS SHOULD BE BANNED

The Department solicited in the ANPRM whether it should adopt Delta's proposal to preclude systems from requiring participation in Internet booking services as a condition to

participation in services offered to travel agent subscribers. In its prior comments in Docket OST-97-2881, Midwest Express supported the Delta proposal as did most others that commented on the issue in the earlier procedural round.

The only opposition came from Amadeus and Sabre to which Midwest Express responded in its reply comments. Midwest Express Reply Comments pages 12-13. Like Midwest Express, Delta is concerned about the potential for abuse brought about by consumer direct access to carrier inventory. Consumers using Internet travel agent sites can cause carriers to make multiple bookings and thereby take seats out of inventory for sale, i.e., spoilage. See Midwest Express comments, Docket OST-97-2881, pages 18-20.

Midwest Express is also frustrated by the lack of control it has over Internet travel agent sites that rely on CRS systems for their schedule and fare information. Among other concerns, Midwest Express is subject to much higher credit card costs when flights are booked through Internet sites, because the sale and ticket fulfillment do not occur at the same time, and for which the banks charge higher fees. Likewise, Midwest Express has had to insist, over objections, that Internet travel agent users of CRS system data be

identified by number so Midwest Express can track the source of its sales revenue. $^{11}$ 

For these and related reasons, Midwest Express and other carriers should have the discretion to preclude CRS systems from making carrier data available to third party Internet travel agent sites should the carrier conclude that whatever additional sales may be generated by the website do not offset the cost or administrative burden associated with such sales. Therefore, Midwest Express believes it is fundamental that it must have the flexibility to direct system owners not to make its schedules available to Internet sites. However, under the standard CRS participation agreement, the CRS system owners have taken the position that, unless a carrier participates at the highest level of functionality, it cannot opt out.

Amadeus has argued that an opt out rule would distort CRS competition. Midwest Express responded that such would hardly be the case since by virtue of the nature of the ticket distribution system virtually all carriers are compelled to participate in each of the four systems. Sabre has argued an opt out rule would be costly, but pointedly failed to quantify the cost so to permit the DOT to make a reasoned judgment on

 $<sup>^{11/}</sup>$  It is logical that any seller would want to maintain data on the source of sales so to mold and refine its marketing programs.

its position. In addition, like Amadeus, Sabre argued carrier participation must be mandatory or CRS competition will suffer. Midwest Express finds this reasoning lacking any merit as the CRS systems are simply trying to profit by making participating carrier data available to airline travel agents without any acknowledgment of the potential difficulties caused by Internet travel agent abuse of the data.

This tying of a purchase of an unwanted service to obtain a desired product is precisely the conduct the Department found objectionable when it banned parity clauses in Docket OST-96-1145. 62 Fed. Reg. 59784 (November 5, 1997). again, CRS system owners are exercising their market power, this time by dictating to participating carriers the terms under which they may withdraw their schedules from an Internet site supported by the CRS owner. This action is being taken by the system owners despite the obvious motivation on the part of participating carriers not to have their schedules displayed on CRS-supported Internet sites to reduce spoilage and eliminate other problems. In the absence of any evidence that an airline would ever accept an arrangement binding it to make its schedules available to Internet sites as a condition to CRS participation, the Department has both the evidence and legal authority, and the support of the vast majority of

affected carriers, to prohibit this manifestation of market power and Midwest Express urges it to do so in this rulemaking proceeding.

#### V. REGULATION OF PREFERRED CARRIER AGREEMENTS WITH TICKET AGENTS IS WARRANTED

Midwest Express is not only concerned about the bias built into some travel agent websites, it is also on record in its prior CRS comments as calling for regulation of agreements between ticket agents and carriers in which the agents agree to prefer the services of the carrier for consideration, usually override commissions or other inducements. The traveling public is harmed when making purchase decisions on the basis of biased information whether the information is coming through a traditional travel agent or a website operated by a travel agent. Therefore, Midwest Express proposes the same remedy it has in section II of these comments and that is to require traditional travel agents to disclose to the public the existence of any preferred carrier agreement, or in the alternative, to sell off the integrated display provided by the CRS vendors.

In its prior comments Midwest Express noted specifically the practice of American Express ("Amex") of entering into preferred carrier agreements with other air carriers and to

favor such carriers in the selling process by biasing schedule displays to downgrade non-preferred carriers. Midwest Express chooses not to enter into such agreement simply to ensure its services are recommended by Amex. As a result, an Amex travel agent will only sell transportation on Midwest Express if a customer specifically asks for it. Amex therefore does not book non-preferred carriers to the same degree they book those from whom it receives extra compensation.

The definition contained in Part 255 states that a subscriber is a ticket agent "that holds itself out a neutral source of information about, or tickets for, the air transportation industry...." This is not the case with Amex, and others like it, that have entered into preferred carrier agreements. If agents are falsely holding themselves out as neutral providers of travel information, then the DOT should act to stop this abuse. Midwest Express, therefore, proposes that the CRS rules provide that ticket agents must inform their customers in appropriate media or otherwise (e.g., at point of the first oral or in-person contact or by means of flyers, other written materials) that they are not acting impartially in advising with respect to the choice of air carrier. If the agents choose not to make such disclosure, they should be required to sell off the integrated display.

#### VI. CONCLUSION

The DOT's regulation of CRS system conduct are vital to a competitive air transportation industry and Midwest Express strongly urges the DOT continue to regulate display bias and other aspects of vendor conduct that are susceptible to abuse based on market power, such as in the field of pricing. addition, the anti-bias uses must be applied to travel agent websites that are an increasingly important means of ticket distribution, lest the consumer make purchase decisions based on misleading information. The same is true with respect to traditional travel agents that receive payments to favor some carriers over others for biasing their schedule displays. Midwest Express calls on the DOT to order these providers of schedule and fare information to either sell off the CRSsupplied integrated display or advise their customers that the information they are providing is biased against non-preferred Elimination of this bias will ensure a more carriers. competitive air transportation industry.

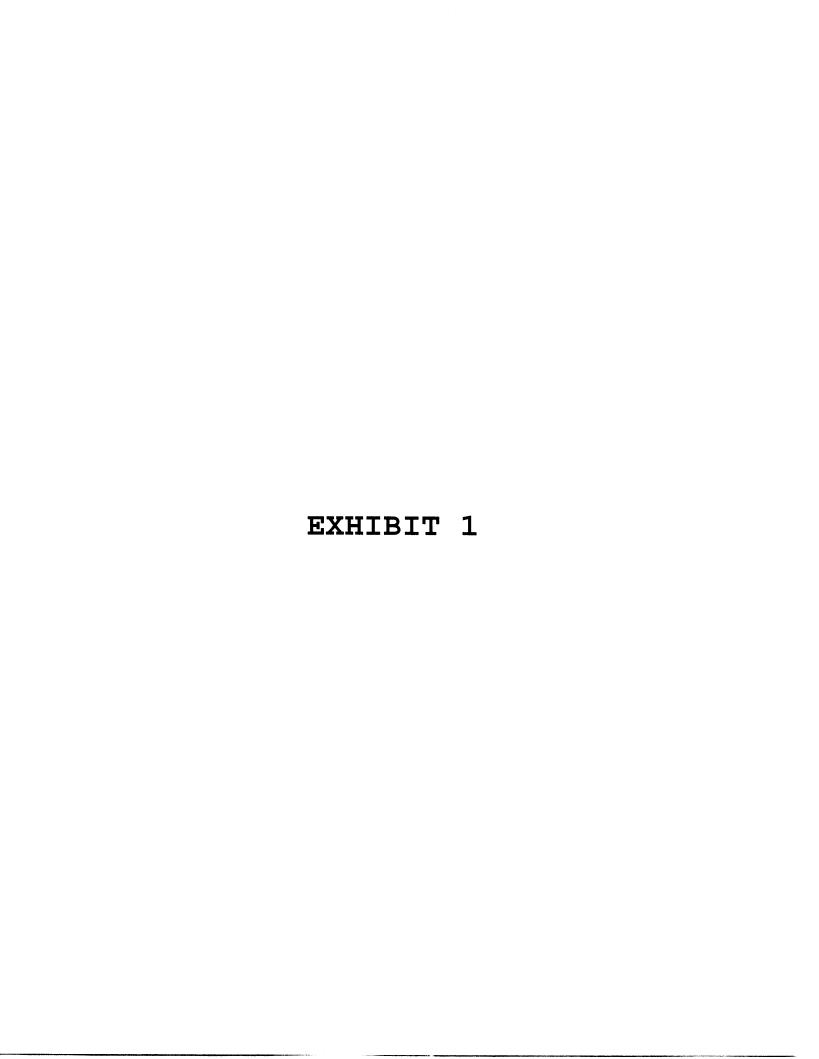
Respectfully submitted,

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Attorneys for

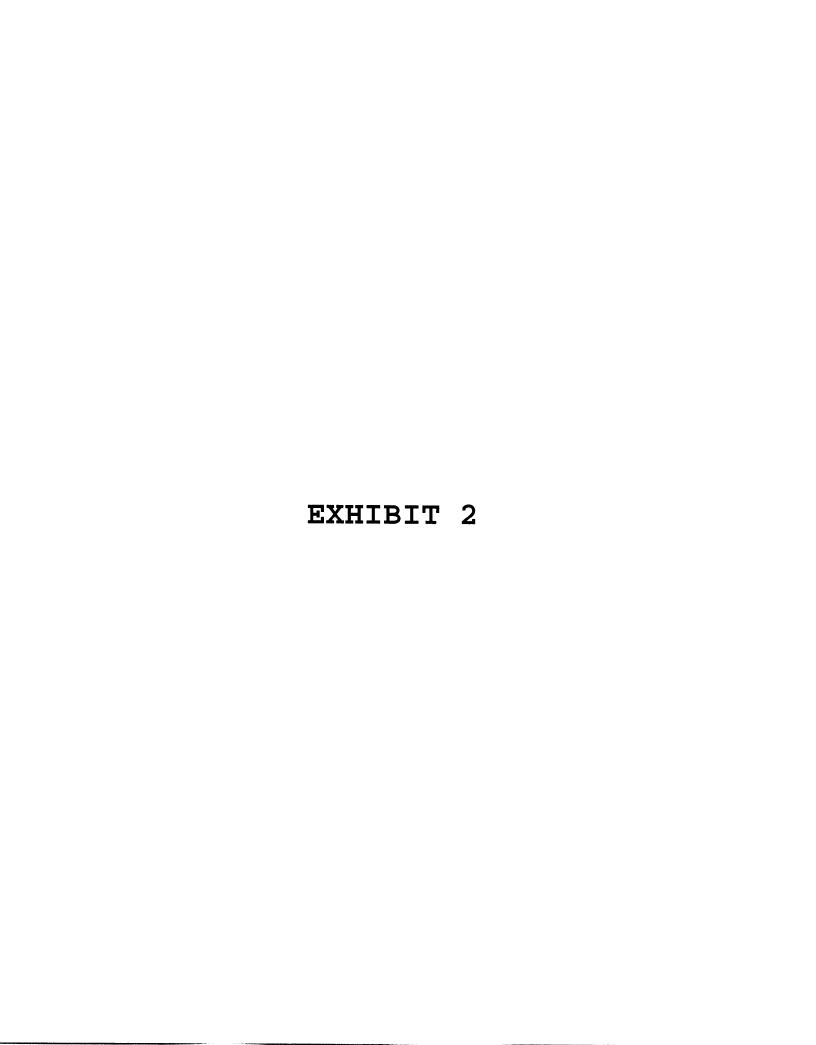
MIDWEST EXPRESS AIRLINES, INC

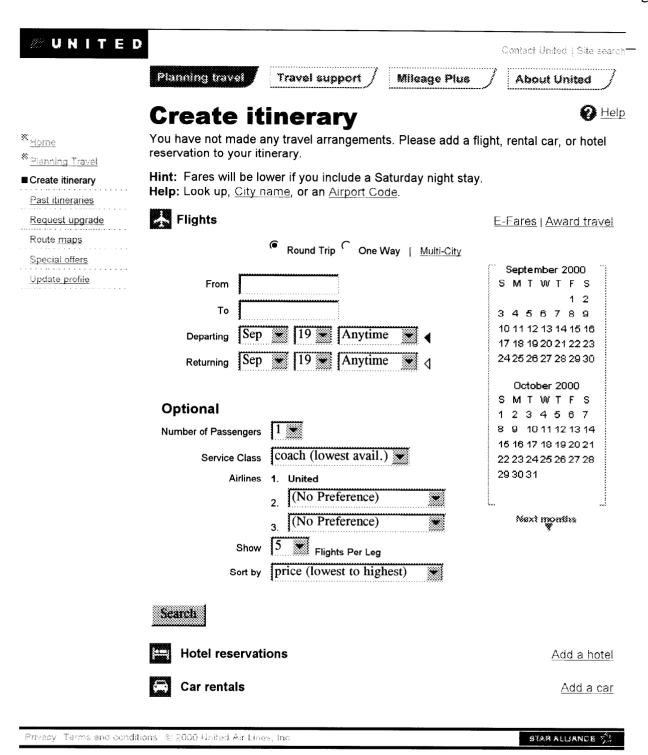
Robert P. Silverberg



## Midwest Express Airlines, Inc. Percentage of Net Bookings by CRS

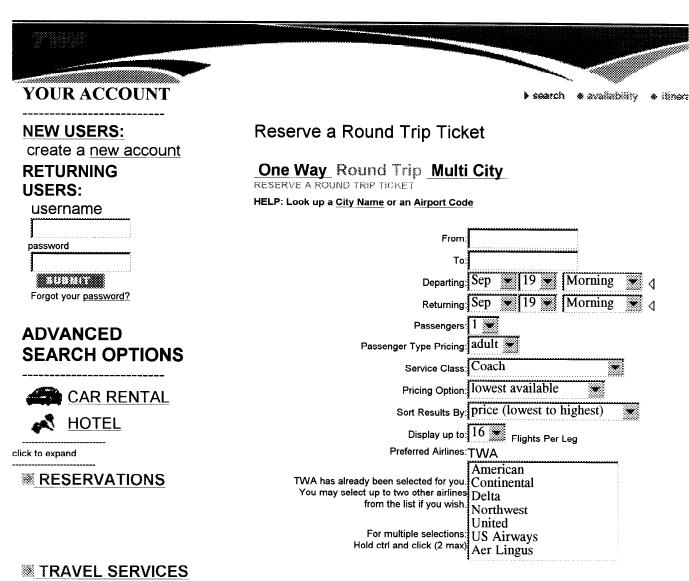
	1995	1996	1997	1998	1999 2000 (Jan - Jun)	
Sabre	29.00%	29.00%	30.02%	27.46%	27.18%	26.52%
Galileo	28.00%	27.50%	27.62%	22.90%	20.78%	18.13%
Worldspan	14.00%	13.00%	13.18%	14.54%	14.59%	13.68%
Amadeus	6.00%	6.00%	6.01%	5.60%	4.88%	4.05%





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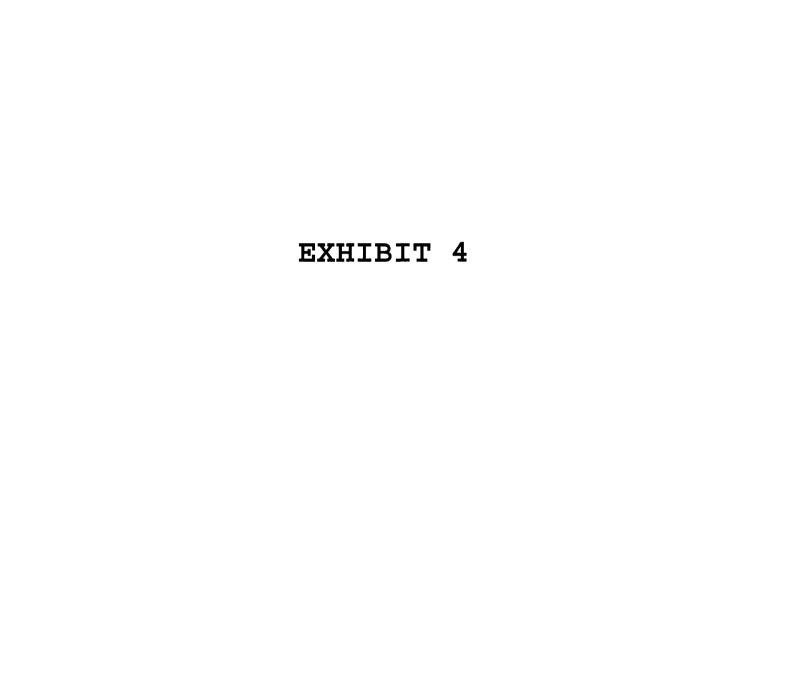




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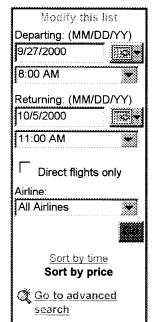






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Wed Milwaukee (MKE) to San Francisco 27-Sep-00 Depart 6:05 AM 7hr 20mn

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Wed Milwaukee (MKE) to 27-Sep-00 Depart 6:30 AM 6hr 4mn

San Francisco (SFO) Arrive 10:34 AM W UNITED AIRLINES Flight: 1623 / 803 Connect in Chicago (ORD)

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San Francisco (SFO) Arrive 2:11 PM

**WUNITED AIRLINES** Flight: 5615 / 143 Connect in Chicago (ORD)

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 $^{*}$  7:10 AM / from \$332 per adult with tax, roundtrip

Milwaukee (MKE) to Wed 27-Sep-00 Depart 7:10 AM 5hr 53mn

San Francisco (SFO) Arrive 11:03 AM Continental Flight: 5719 / 5351

Connect in Minneapolis (MSP) Select this flight and continue

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Wed

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9:10 AM / from \$334 per adult with tax, roundtrip

Wed Milwaukee (MKE) to San Francisco 27-Sep-00 Depart 9:10 AM 5hr 53mn

(SFO) Arrive 1:03 PM **#** United airlines Flight: 5581 / 535 Connect in Denver (DEN)

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Wed Milwaukee (MKE) to San Francisco 27-Sep-00 Depart 9:10 AM (SFO)

5hr 58mn Arrive 1:08 PM **WUNITED AIRLINES** Flight: 5581 / 1553 Connect in Denver (DEN)

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### 6:30 AM / from \$336 per adult with tax, roundtrip

Wed Milwaukee (MKE) to San Francisco 27-Sep-00 Depart 6:30 AM 9hr 14mn

(SFO) Arrive 1:44 PM

# UNITED AIRLINES Flight: 1623 / 103 / 2034 Connect in Chicago (ORD), Los Angeles (LAX) Select this flight and continue

## 9:00 AM / from \$337 per adult with tax, roundtrip

Wed Milwaukee (MKE) to San Francisco 27-Sep-00 Depart 9:00 AM 5hr 41mn

(SFO) Arrive 12:41 PM

American Airlines\* Flight: 4323 / 1853 Connect in Chicago (ORD)

Select this flight and continue

# 7:10 AM / from \$411 per adult with tax, roundtrip

Wed 27-Sep-00 Depart 7:10 AM 5hr 53mn

Milwaukee (MKE) to San Francisco (SFO) Arrive 11:03 AM

A NORTH CENT Flight: 719 / 351

Connect in Minneapolis (MSP)

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## 7:15 AM / from \$434 per adult with tax, roundtrip

Wed 27-Sep-00 Depart 7:15 AM 6hr 13mn

Milwaukee (MKE) to San Francisco (SFO) Arrive 11:28 AM

American Airlines Flight: 4233 / 1555 Connect in Chicago (ORD)

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### 7:53 AM / from \$725 per adult with tax, roundtrip

Wed 27-Sep-00 Depart 7:53 AM 6hr 56mn

Milwaukee (MKE) to San Francisco

(SFO) Arrive 12:49 PM

Waninka wist Fliaht: 2765 / 2805

Connect in Phoenix (PHX)

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### 8:40 AM / from \$814 per adult with tax, roundtrip

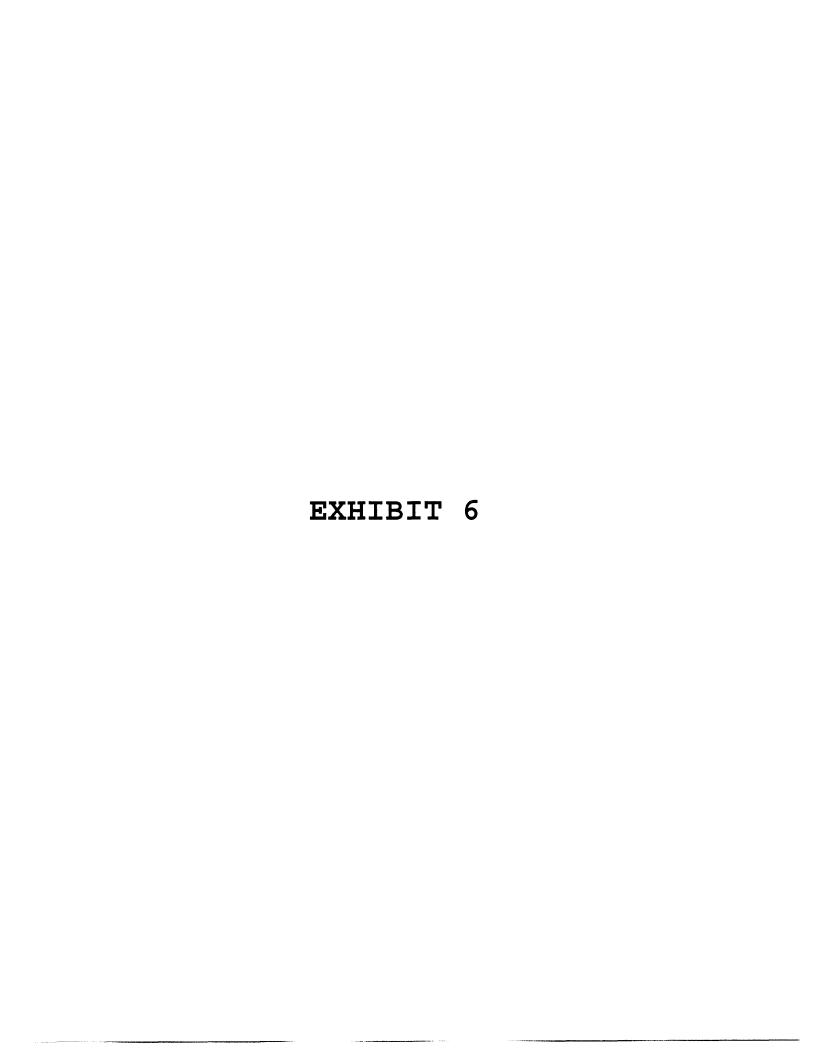
Milwaukee (MKE) to San Francisco Wed 27-Sep-00 Depart 8:40 AM 4hr 20mn

(SFO) Arrive 11:00 AM MIDWEST EXPRESS AIRLINES Flight: 918

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- Adults (age 12 to 61) if a child under 18 is traveling alone. 0 Seniors (age 62 and over) 0 Children (age 2 to 11) Infants (under age 2 at time of travel)
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  - Infant without a reserved seat (in an adult's lap)

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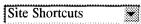




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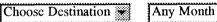
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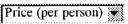




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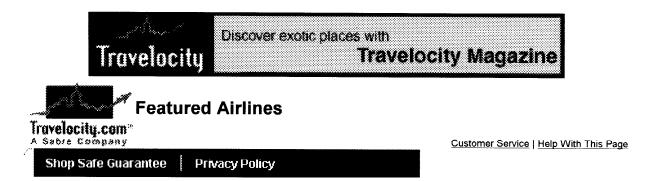
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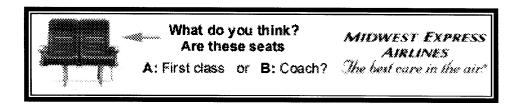
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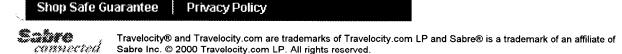


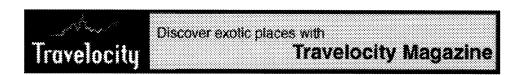
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MD80 Jet Flight:

Departs: Sunday, Oct. 01

To: San Francisco, CA (SFO) at 11:00am From: Milwaukee, WI (MKE) at 8:40am

2tops: None

Flight:

7 🕶 150 Return Date: f noitqO

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Midwest Express flight 921 on a McDonnell Dou

From: San Francisco, CA (SFO) at 11:55am

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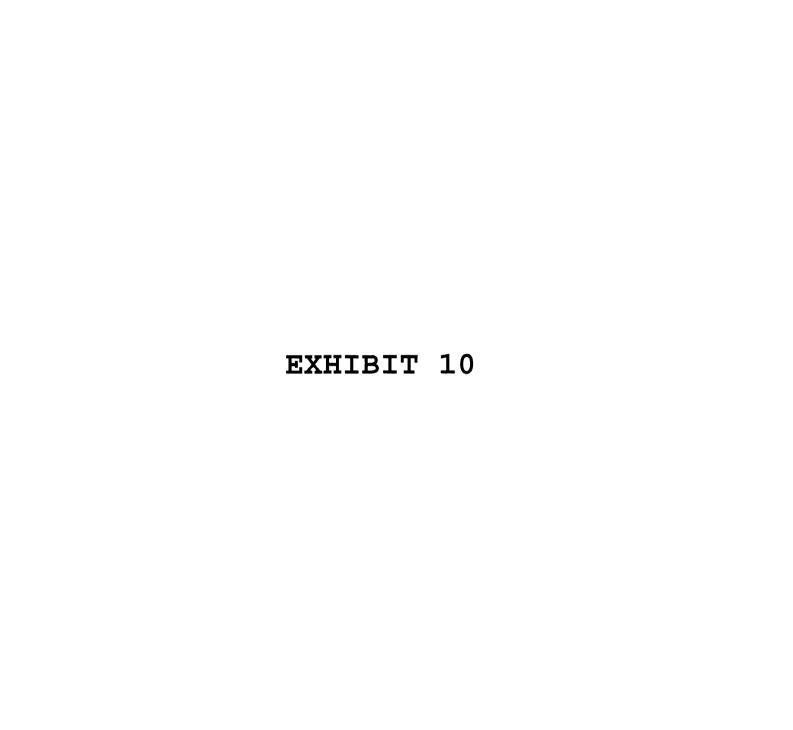
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Milwaukee, WI to San Francisco, CA

Sunday, October 01

Option 1



Flight: Midwest Express flight 918 on a McDonnell Douglas MD80 Jet From: Milwaukee, WI (MKE) Sunday, Oct. 1

San Francisco, CA (SFO)

8:40am 11:00am

Meals: Breakfast

Option 2



Flight: Sun Country Air flight 791 on a Boeing 727 Jet

Sunday, Oct. 1

1 stop 6:45am

San Francisco, CA (SFO)

From: Milwaukee, WI (MKE)

11:15am

Meals: Snack/Brunch, Breakfast

Option 3

Flight: American Airlines flight 4323 operated by:

AMERICAN EAGLE on a Embraer ERJ-145 Jet

Sunday, Oct. 1

9:00am

From: Milwaukee, WI (MKE) To: Chicago OHare (ORD)

9:44am

Meals: No Meal Served

Connecting In

Flight: American Airlines flight 1853 on a Boeing 737-800 Jet

10:14am

From: Chicago OHare (ORD) San Francisco, CA (SFO) Sunday, Oct. 1

12:41pm

Meals: Lunch

Option 4



Flight: Northwest Airlines flight 719 on a Boeing 757 Jet

From: Milwaukee, WI (MKE)

Sunday, Oct. 1

7:10am

Minneapolis/St Paul (MSP) To:

8:30am

Meals: No Meal Served

.... Connecting To -

Flight: Northwest Airlines flight 351 on a McDonnell Douglas DC10 Jet Sunday, Oct. 1 From: Minneapolis/St Paul (MSP) 9:05am

San Francisco, CA (SFO) To:

11:03am

Meals: Breakfast

Option 5



Flight: Continental Airlines flight 5719 operated by:

Northwest Airlines on a Boeing 757 Jet

From: Milwaukee, WI (MKE)

Sunday, Oct. 1

7:10am

Minneapolis/St Paul (MSP)

8:30am

No Meal Served

Connecting To Flight: Continental Airlines flight 5351 operated by:

Northwest Airlines on a McDonnell Douglas DC10 Jet

From: Minneapolis/St Paul (MSP) Sunday, Oct. 1 9:05am San Francisco, CA (SFO) 11:03am

Meals: Breakfast

Option 6

Flight: Sun Country Air flight 49 on a McDonnell Douglas DC10 Jet

From: Milwaukee, WI (MKE) Sunday, Oct. 1 9:00am Las Vegas, NV (LAS) 10:40am

Meals: Breakfast

Cassecting To .

Flight: America West flight 2868 on a Airbus Industrie Jet

From: Las Vegas, NV (LAS) Sunday, Oct. 1 11:27am San Francisco, CA (SFO) 12:55pm

Meals: No Meal Served

**Option 7** 

Flight: Sun Country Air flight 49 on a McDonnell Douglas DC10 Jet

From: Milwaukee, WI (MKE) Sunday, Oct. 1 9:00am Las Vegas, NV (LAS) 10:40am

Meals: Breakfast

Connecting To -Flight: National Airlines flight 100 on a Boeing 757 Jet

From: Las Vegas, NV (LAS) Sunday, Oct. 1 11:30am San Francisco, CA (SFO) 1:00pm

Meals: Snack/Brunch

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